

MERCHANT, GOULD, SMITH, EDELL, WELTER & SCHMIDT

United States Patent Application

COMBINED DECLARATION AND POWER OF ATTORNEY

As a below named inventor I her by declare that: my residence, post office address and citizenship are as stated below next to my name; that

I verily believe I am the original, first and sole inventor (if only one name is listed below) or a joint inventor (if plural inventors are named below) of the subject matter which is claimed and for which a patent is sought on the invention entitled: SPINAL STABILIZATION SURGICAL METHOD

The specification of which

a. X is attached hereto

b. was filed on as application serial no. and was amended on (if applicable) (in the case of a PCT-filed application) described and claimed in international no. filed and as amended on (if any), which I have r viewed and for which I solicit a United States patent.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to the examination of this application in accordance with Title 37, Code of Federal Regulations, § 1.56 (see page 3 attached hereto).

I hereby claim foreign priority benefits under Title 35, United States Code, § 119/365 of any foreign application(s) for patent of inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on the basis of which priority is claimed:

a. X no such applications have been filed.

b. such applications have been filed as follows:

FOREIGN APPLICATION(S), IF ANY, CLAIMING PRIORITY UNDER 35 USC § 119

COUNTRY	APPLICATION NUMBER	DATE OF FILING (day, month, year)	DATE OF ISSUE (day, month, year)

ALL FOREIGN APPLICATIONS, IF ANY, FILED BEFORE THE PRIORITY APPLICATION(S)

COUNTRY	APPLICATION NUMBER	DATE OF FILING (day, month, year)	DATE OF ISSUE (day, month, year)

I hereby claim the benefit under Title 35, United States Code, § 120/365 of any United States and PCT international application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, § 112, I acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, 1.56(a) which occurred between the filing date of the prior application and the national or PCT international filing date of this application.

U.S. APPLICATION NUMBER	DATE OF FILING (day, month, year)	STATUS (patented, pending, abandoned)

I hereby appoint the following attorney(s), and/or patent agent(s) to prosecute this application and to transact all business in the Patent and Trademark Office connected herewith:

Barrington, Karl E.	Reg. No. 35,183	Hillson, Randall A.	Reg. No. 31,838	Schwappach, Karl G.	Reg. No. 35,786
Battli, Brian E.	Reg. No. 32,960	Kluth, Daniel J.	Reg. No. 32,146	Schwagman, Michael L.	Reg. No. 25,816
Beck, Robert C.	Reg. No. 28,184	Kowalchuk, Alan W.	Reg. No. 31,335	Seager, Glenn H.	Reg. No. P-36,926
Bogucki, Raymond A.	Reg. No. 17,426	Kowalchuk, Katherine M.	Reg. No. P-36,848	Seibald, Gregory A.	Reg. No. 33,280
Breman, Thomas F.	Reg. No. 33,075	Laskey, Michael B.	Reg. No. 29,555	Smith, Phillip E.	Reg. No. 20,476
Bruess, Steven C.	Reg. No. 34,130	Lundberg, Steven W.	Reg. No. 30,568	Smith, Stephanie J.	Reg. No. 34,437
Byrne, Linda M.	Reg. No. 32,404	Lynch, David W.	Reg. No. 36,204	Sorensen, Andrew D.	Reg. No. 33,606
Carlson, Alan G.	Reg. No. 25,959	Man, Michael L.	Reg. No. 30,087	Steenstrom, Dennis C.	Reg. No. 28,910
Caspers, Philip P.	Reg. No. 33,227	McDonald, Daniel W.	Reg. No. 32,044	Strawbridge, Douglas A.	Reg. No. 28,376
Clifford, John A.	Reg. No. 30,247	McDonald, Wendy M.	Reg. No. 32,427	Strodchoff, Kristine M.	Reg. No. 34,259
Conrad, Timothy R.	Reg. No. 30,164	Michal, Michelle M.	Reg. No. 33,968	Summer, John P.	Reg. No. 29,114
DiPietro, Mark J.	Reg. No. 28,707	Moy, R. Carl	Reg. No. 30,725	Summers, John S.	Reg. No. 24,216
Edell, Robert T.	Reg. No. 20,187	Muehling, Ann M.	Reg. No. 33,977	Taylor, Gregory M.	Reg. No. 34,263
Freed, Robert C.	Reg. No. 32,569	Mundelins, Antony C.	Reg. No. 35,963	Tallakson, David K.	Reg. No. 32,314
Gafner, Peter J.	Reg. No. P-36,517	Nelson, Albin J.	Reg. No. 28,650	Underhill, Albert L.	Reg. No. 27,403
Gates, George E.	Reg. No. 33,500	Rasch, Kevin W.	Reg. No. 33,651	Vandenburgh, J. Derek	Reg. No. 32,179
Golla, Charles E.	Reg. No. 28,896	Railand, Earl D.	Reg. No. 25,767	Vietske, Lance L.	Reg. No. P-36,708
Gould, John D.	Reg. No. 18,223	Rothfuss, Joel A.	Reg. No. 33,277	Welter, Paul A.	Reg. No. 20,890
Greene, John J.	Reg. No. 33,112	Schmidt, Cecil C.	Reg. No. 20,566	Williams, Douglas J.	Reg. No. 27,054
Hamre, Curtis B.	Reg. No. 29,165	Schuman, Mark D.	Reg. No. 31,197	Woesner, Warren D.	Reg. No. 30,440
Hessing, Thomas A.	Reg. No. 36,159	Schumann, Michael D.	Reg. No. 30,422	Wood, Gregory B.	Reg. No. 28,133

I hereby authorize them to act and rely on instructions from and communicate directly with the person/assignee/attorney/firm/organization/who/which first sends/sent this case to them and by whom/which I hereby declare that I have consented after full disclosure to be represented unless/until I instruct Merchant, Gould to the contrary.

Please direct all correspondence in this case to Merchant, Gould, Smith, Edell, Welter & Schmidt at the address indicated below:

3100 Norwest Center, Minneapolis, MN 55402-4131
Telephone No. (612)332-5300

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2	Full Name Of Inventor	Family Name	First Given Name	Second Given Name
0	Residence & Citizenship	City	State or Foreign Country	Country of Citizenship
1	Post Office Address	Post Office Address	City	State & Zip Code/Country
		2400 Keller Parkway	Maplewood	MN/55119/USA
2	Full Name Of Inventor	Family Name	First Given Name	Second Given Name
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		Edina	Minnesota	USA
		6517 Sherwood Avenue	Edina	MN/55435/USA
2	Full Name Of Inventor	Family Name	First Given Name	Second Given Name
0	Residence & Citizenship	City	State or Foreign Country	Country of Citizenship
3	Post Office Address	Post Office Address	City	State & Zip Code/Country
	Signature of Inventor 201	Signature of Inventor 202	Signature of Inventor 203	
	<i>Stephen D. Kusch</i>	<i>David M. Koh</i>		
	Date	Date	Date	
	<i>Feb 10, 1993</i>	<i>Feb 10, 1993</i>		

For Additional Inventors:

— Indicate here and attach sheet with same information, including date and signature.

1.56. Duty to disclose information material to patentability.

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

- (1) prior art cited in search reports of a foreign patent office in a counterpart application, and
 - (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.
- (b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

- (1) - It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim;

or

- (2) It refutes, or is inconsistent with, a position the applicant takes in:
 - (i) Opposing an argument of unpatentability relied on by the Office, or
 - (ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

(c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

- (1) Each inventor named in the application;
 - (2) Each attorney or agent who prepares or prosecutes the application; and
 - (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.
- (d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.